



GENERAL CONDITIONS FOR THE SUPPLY OF PLANT AND MACHINERY FOR EXPORT

1. Preamble

- 1.1 These General Conditions shall apply, save as varies by express agreement accepted in writing by both parties.
- 1.2 The term "in writing", when mentioned in these General Conditions, means: by means of a document undersigned by both parties, or by means of a letter, fax, email or any other form stipulated by the parties.
- 1.3 All stipulations of the Parties to the Contract must be in writing in order to be valid.
- 1.4 If the German and the foreign-language text are interpreted differently, the German text shall prevail.

2. Formation of Contract

- 2.1 The Contract shall be deemed to have been entered into when, upon receipt of an order, the vendor has sent an acceptance in writing within the time limit (if any) fixed by the purchaser.
- 2.2 If the Vendor, in drawing up his tender, has fixed a time-limit for acceptance, the Contract shall be deemed to have been entered into when the Purchaser has sent an acceptance in writing before the expiration of such time-limit, provided that there shall be not binding Contract unless the acceptance reaches the Vendor not later than one week after the expiration of such time-limit.

3. Drawing and descriptive document

- 3.1 The data about weight, measures, capacities and the like contained in catalogues, brochures, circular letters, advertisements, illustrations and price lists are only binding to the extent explicitly declared as being binding in the contract. This also applies to data and information contained in general product documentations and price lists available in electronic or any other form.
- 3.2 Plans and technical documents that are handed over to the purchaser or made available to him in electronic form before or after the conclusion of the contract and that can be used for manufacturing the delivery item or individual parts remain the exclusive property of the seller. They may not, without the Vendor's consent, be utilized by the Purchaser or copied, reproduced, transmitted or communicated to a third party. Provided, however, that the said plans and documents shall be the property of the Purchaser;
 - (a) if it is expressly so agreed, or
 - (b) if they are referable to a separate preliminary Development Contract on which no actual construction was to be performed and in which the property of the Vendor in the said plans and documents was not reserved.
- 3.3 Plans and technical documents that the purchaser hands over to the seller or that the purchaser makes available to the seller in electronic form before or after the conclusion of the contract and that can be used for manufacturing the delivery item or individual parts remain the exclusive property of the purchaser. They may not, without his consent, be utilized by the Vendor, or copied, reproduced, transmitted or communicated to a third party.
- 3.4 The vendor shall, if required by the Purchaser, furnish free of charge to the Purchaser at the commencement of the Guarantee period, as defined in Clause 9, information and drawings other than manufacturing drawings of the Plant of sufficient detail to enable the Purchaser to carry out the erection, commissioning, operation and maintenance (including running repairs) of all parts of the Plant. These can also be provided in electronic form. Such information and drawing shall be the property of the Purchaser and the restrictions on their use set out in



paragraph 2 hereof shall not apply thereto. Provided that if the vendor so stipulates, they shall remain confidential.

4. Packing

4.1 Unless otherwise specified:

- (a) prices shown in price lists and catalogues shall be deemed to apply to unpacked Plant;
- (b) prices quoted in tenders and in the Contract shall include the cost of packing or protection required under normal transport conditions to prevent damage to or deterioration of the Plant before it reaches its destination as stated in the Contract.

5. Inspection and Tests

5.1 If expressly agreed in the Contract, the Purchaser shall be entitled to have the quality of the materials used and the parts of the Plant, both during manufacture and when completed, inspected and checked by his authorised representatives. Such inspection and checking shall be carried out at the place of manufacture during normal working hours after agreement with the Vendor as to date and time.

5.2 If as a result of such inspection and checking the Purchaser shall be of the opinion that any materials or parts are defective or not in accordance with the Contract, he shall state in writing his objections and the reason thereof.

ACCEPTANCE TESTS

5.3 Acceptance tests shall only be carried out if they are explicitly stipulated in the contract. If this is the case, they shall be carried out in the seller's works during ordinary hours of work if nothing to the contrary is stipulated. If the technical requirements of the tests are not specified in the Contract, the tests will be carried out in accordance with the general practice obtaining in the appropriate branch of the industry in the country where the Plant is manufactured.

5.4 The Vendor shall give to the Purchaser sufficient notice of the tests to permit the Purchaser's representatives to attend. If the Purchaser is not represented at the tests, the test report shall be communicated by the Vendor to the Purchaser and shall be accepted as accurate by the Purchaser.

5.5 If on any test (other than a test on site, where test on site are provided for in the Contract) the Plant shall be found to be defective or not in accordance with the Contract, the Vendor shall with all speed make good the defect or ensure that the Plant complies with the Contract. The purchaser can set an appropriate deadline for this. Thereafter, if the Purchaser so requires, the test shall be repeated.

5.6 Unless otherwise agreed, the Vendor shall bear all the expenses of tests carried out in his works, except the personal expenses of the Purchaser's representatives.

5.7 If the contract provides for test on site, the terms and conditions governing such tests shall be such as may be specially agreed between the parties.

6. Passing of risk

6.1 Save as provided in paragraph 7.6 the time at which the risk shall pass is fixed in accordance with the International Rules for the Interpretation of Trade Term (Incoterms) of the International Chamber of Commerce in force at the date of the formation of the Contract. Where no indication is given in the Contract of the form of sale, the Plant shall be deemed to be sold "ex-works".

6.2 In the case of a sale "ex-works", the Vendor must give notice in writing to the Purchaser of the date on which the Purchaser must take delivery of the Plant. The notice of the Vendor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for purpose of taking delivery.



- 6.3 If in the case of a sale “ex works” the Vendor, on demand of the Purchaser, undertakes to send the Plant to its destination, the risk will pass on delivery to the first carrier, provided that this date is prior to the date indicated in art. 6 para 2.
- 6.4 If the Purchaser, on the ground of one of the circumstances referred to in art. 10, fails to take delivery of the Plant, the risk will pass to the Purchaser not later than at the date this circumstance has appeared.

7. Delivery

7.1 Unless otherwise agreed, the delivery period shall run from the latest of the following dates:

- (a) the date of the formation of the Contract as defined in Clauses 2;
- (b) the date on which the vendor receives notice of the issue of a valid import licence where such is necessary for the execution of the Contract;
- (c) the date of the receipt by the Vendor of such payment in advance of manufacture as is stipulated in the Contract.

It is a further prerequisite of the beginning of the delivery period that agreement must be reached with respect to all technical questions, clarification of which had been postponed by the Parties, at the time the Contract was entered into, until further negotiations, and that any official authorization that may be required for fulfilment of the obligations of the Vendor has been issued.

- 7.2 Should delay in delivery be caused by any of the circumstances mentioned in Clauses 10 or by an act or omission of the Purchaser and whether such cause occurs before or after the time or extended time for delivery, there shall be granted subject to the provisions of paragraph 5 hereof such extension of the delivery period as is reasonable having regard to all circumstances of the case.
- 7.3 If a fixed time for delivery is provided for in the Contract, and the Vendor fails to deliver within such time or any extension thereof granted under paragraph 2 hereof, the Purchaser shall be entitled, on giving to the Vendor within a reasonable time notice in writing to claim a reduction of the price payable under the Contract, unless it can be reasonably concluded from the circumstances of the particular case that the Purchaser has suffered no loss. Such reduction shall equal the percentage named in paragraph A of the Appendix of that part of the price payable under the Contract which is properly attributable to such portion of the Plant as cannot in consequence of the said failure be put to the use intended for each complete week of delay commencing on the due date of delivery, but shall not exceed the maximum percentage named in paragraph B of the Appendix. Such reduction shall be allowed when a payment becomes due on or after delivery. Save as provided in paragraph 5 hereof, such reduction of price shall be to the exclusion of any other remedy of the Purchaser in respect of the Vendor’s failure to deliver as aforesaid.
- 7.4 If the time for delivery mentioned in the Contract is an estimate only, either party may after the expiration of two thirds of such estimated time require the other party in writing to agree a fixed time.

Where no time for delivery is mentioned in the Contract, this course shall be open to either party after the expiration of six months from the formation of the Contract.

If in either case the parties fail to agree, either party may have recourse to arbitration, in accordance with the provisions of Clause 13, to determine a reasonable time for delivery and the time so determined shall be deemed to be the fixed time for delivery provided for in the Contract and paragraph 3 hereof shall apply accordingly.

- 7.5 If any portion of the Plant is respect of which the Purchaser has become entitled to the maximum reduction provided for by paragraph 3 hereof, or in respect of which he would have been so entitled had he given the notice referred to therein, remains undelivered, the Purchaser



many by notice in writing to the Vendor require him to deliver and by such last mentioned notice fix a final time for delivery which shall be reasonable, taking into account such delay as has already occurred. If for any reason whatever the Vendor fails within such time to do everything that he must do to effect delivery the Purchaser shall be entitled by notice in writing to the Vendor and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant and thereupon to recover from the Vendor any loss suffered by the Purchaser by reason of the failure of the Vendor as aforesaid up to an amount not exceeding the sum named in paragraph C of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant as could not in consequence of the Vendor's failure be put to the use intended. The compensation for any damage beyond this is exclusively determined pursuant to Article 11.

7.6 If the Purchaser fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the Plant had been delivered. The Vendor shall arrange for the storage of the Plant at the risk and cost of the Purchaser. Provided that is the delay in accepting delivery is due to one of the circumstances mentioned in Clauses 10 and the Vendor is in a position to store it in his premises without prejudice to his business, the cost of storing the Plant shall not be borne by the Purchaser.

7.7 Unless the failure of the Purchaser is due to any of the circumstances mentioned in Clause 10, the Vendor may require Purchaser by notice in Writing to accept delivery within a reasonable time.

If the Purchaser fails for any reason whatsoever to do so within time the Vendor shall be entitled by notice in writing to the Purchaser and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant as is by reason of such failure up to an amount not exceeding the sum named in paragraph D of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant. The Purchaser shall be entitled to prove that less damage has occurred to the Vendor.

8. Payment

8.1 Payment shall be made in the manner and at the time or times agreed by the parties.

8.2 Any advance payments made by the Purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the Contract.

8.3 If delivery has been made before payment of the whole sum payable under the Contract, Plant delivered shall to the extent permitted by the law of the country where the Plant is situated after delivery remain the property of the Vendor until such payment has been effected. If such law does not permit the Vendor to retain the property in the Plant, the Vendor shall be entitled to the benefit of such other rights in respect thereof as such law permits him to retain. The purchaser shall be obliged to contribute to any measures he wants to take to protect his ownership or in its stead any other right to the delivery item.

8.4 A payment conditional on the fulfilment of an obligation by the Vendor shall not be due until such obligation has been fulfilled unless the failure of the Vendor is due to an act or omission of the Purchaser.

8.5 If the Purchaser delays in making any payment the Vendor may postpone the fulfilment of his own obligations until such payment is made unless the failure of the Purchaser is due to an act or omission of the Vendor. The Vendor shall be entitled to refuse performance if, due to a circumstance that originated after the formation of the Contract, he has reason to fear that he may not receive the performance of the Purchaser completely in time.

8.6 If delay by the Purchaser in making any payment is due to one of the circumstances mentioned in Clause 10, the Vendor shall not be entitled to any interest on the sum due.



- 8.7 Save as aforesaid, if the Purchaser delays in making any payment, the Vendor shall on giving to the Purchaser within a reasonable time notice in writing be entitled to the payment on interest on the sum due at the rate fixed in paragraph E of the Appendix from the date on which such sum become due. If at the end of the period fixed in paragraph F of the Appendix, the Purchaser shall still have failed to pay the sum due, the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent to any Court, to terminate the Contract and thereupon to recover from the Purchaser the amount of his loss up to the sum mentioned in paragraph D of the Appendix. The Purchaser shall be entitled to prove that less damage has occurred to the Vendor.
- 9. Guarantee**
- 9.1 Subject as hereinafter set out; the Vendor undertakes to remedy any defect resulting from faulty design, materials or workmanship. The Purchaser shall inform the Vendor what protective devices he requires against dangers originating from the use of the Plant. They shall be delivered at the Purchaser's own expense if both Parties have agreed on the kind and scope of the protective devices to be delivered. Failure to deliver other protective devices shall not be deemed to be a defect.
- 9.2 This liability is limited to defects which appear during the period (hereinafter called "the Guarantee Period") specified in paragraph C of Appendix.
- 9.3 In fixing this period due account has been taken of the time normally required for transport as contemplated in the Contract.
- 9.4 In respect of such parts (whether of the Vendor's own manufacture or not) of the Plant as are expressly mentioned in the Contract, the Guarantee Period shall be such other period (if any) as is specified in respect of each of such parts.
- 9.5 The Guarantee Period shall start from the date on which the Purchaser receives notification in writing from the Vendor that the Plant is ready for dispatch from the works. If dispatch is delayed, the Guarantee Period shall be extended by a period equivalent to the amount of the delay so as to permit the Purchaser the full benefit of the time given for trying out the Plant. Provided however that if such delay is due to a cause beyond the control of the Vendor such extension shall not exceed the number of months stated in paragraph 11 of the Appendix.
- 9.6 The daily use of the Plant and the amount by which the Guarantee period shall be reduced if the Plant is used more intensively are sated in paragraph 1 of the Appendix.
- 9.7 If the purchaser detects any defect, he must immediately give notice of the defect to the seller in writing. Such a notice of defects must be given in any case within 2 weeks after the lapse of the warranty period. The notice must describe the defect. If the purchaser does not give notice of the defect to the seller in writing within the period set in this item, the purchaser forfeits his right to the removal of the defect. If the defect could cause damages, the purchaser must immediately inform the seller about this The risk of damages resulting from not giving notice lies with the purchaser. The purchaser must give the seller any opportunity of detecting and removing an indicated defect.
- 9.8 Upon receipt of the notice of defects (Item 7 of this article), the seller must immediately remove the defect at his own costs. The defect must be in principle removed at the location of the delivery item; however, it shall be at the discretion of the seller to have the defective part or the delivery item returned in order to repair or exchange the same. The seller shall be obliged to remove and install the part if this requires particular skills. If no such particular skills are required, the seller's obligation as regards the defect shall end with the delivery of the orderly repaired or exchanged part to the purchaser.
- 9.9 If there are no agreements to the contrary, the purchaser shall undertake, at his costs and risk, the transport of the defective parts, the repaired parts or the replacement parts between the



place of installation and the place to which the purchaser has returned the item upon the seller's request.

- 9.10 Where in pursuance of paragraph 9 hereof, repairs are required to be effected on site, the conditions covering the attendance of the Vendor's representatives on site shall be such as may be specially agreed between the parties.
- 9.11 Defective parts replaced in accordance with this Clause shall be placed at the disposal of the Vendor.
- 9.12 If the Vendor refuses to fulfil his obligations under this Clause or fails to proceed with due diligence after being required so to do, the Purchaser may proceed to do the necessary work at the Vendor's risk and expense, provided that he does so in reasonable manner.
- 9.13 The Vendor's liability does not apply to defects arising out of materials provided, or out of a design stipulated, by the Purchaser.
- 9.14 The Vendor's liability shall apply only to defects that appear under the conditions of operation provided for by the Contract and under proper use. It does not cover defects due to causes arising after the risk in the Plant has passed in accordance with Clause 6. In particular it does not cover defects arising from the Purchaser's faulty maintenance or erection or from alterations carried out without the Vendor's consent in writing, or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.
- 9.15 If the rectification of defects pursuant to Article 9 fails
- 9.15.1 the purchaser may request a reduction of the purchase price corresponding to the reduced value of the delivery item; in this case, the reduction must in no case exceed the value determined under Item J of the Annex; or
- 9.15.2 if the defect is so fundamental that the purchaser loses interest in the contract, the purchaser may withdraw from the contract upon written notice to the seller. The purchaser may then demand payment of damages. The maximum amount of the damages is restricted to the value stated under Item K of the Annex.
- 9.16 Save as in this Clause expressed, the Vendor shall be under no liability in respect of defects after the risk in the Plant has passed in accordance with Clause 6, even if such defects are due to causes existing before the risk so passed. It is expressly agreed that the Purchaser shall have no claim in respect, of damages to property not the subject-matter of the Contract or of loss or profit unless it is shown from the circumstances of the case that the Vendor has been guilty of gross misconduct.
- 9.17 "Gross Misconduct" does not comprise any and every lack or proper care or skill, but means and act or omission on the part of the Vendor implying either a failure to pay due regard to serious consequences which a conscientious Contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.

10. Reliefs

- 10.1 The following shall be considered as cases of relief if they intervene after the formation of the Contract and impede its performance :Industrial disputes and any other circumstances (e.g. fire, mobilization, requisition, embargo, currency restrictions, insurrection, shortage of materials and restrictions, insurrection, shortage of transport, general shortage of materials and restrictions in the use of power) when such other circumstances are beyond the control of the parties.
- 10.2 The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.
- 10.3 The effects of the said circumstances, so far as they affect the timely performance of their obligations by the parties, are defined in Clauses 7 and 8. Save as provided in Paragraph 7.5,



7.7 and 8.7., if by reason of any of the said circumstances, the performance of the Contract within a reasonable time becomes impossible, either party shall be entitled to terminate the contract.

10.4 If the Contract is terminated in accordance with paragraph 3 hereof, the division of the expenses incurred in respect of the Contract shall be determined by agreement between the parties.

10.5 In default of agreement it shall be determined by the arbitrator which party has been prevented from performing his obligations and the party shall bear the whole of the said expenses. Where the Purchaser is required to bear the whole of the expenses and has before termination of the Contract paid to the Vendor more than the Vendor's expenses, the Purchaser shall be entitled to recover the excess.

If the arbitrator determines that both parties have been prevented from performing their obligations, he shall apportion the said expenses between the parties in such manner as to him seem fair and reasonable, having regard to all the circumstances of the case.

10.6 For the purposes of this Clause "expenses" means actual out-of-pocket expenses reasonably incurred, after both parties shall have mitigated their losses as far as possible. Provided that as respects Plant delivered to the Purchase the Vendor's expenses shall be deemed to be that part of the price payable under the Contract which is properly attributable thereto.

11. Limitations of damages

11.1 Whether either party is liable in damages to the other these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of the Contract.

11.2 The party who sets up a breach of the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience, or cost. Should he fail to do so, the party guilty of the breach may claim a reduction in the damages.

11.3 All further claims lodged by the Purchaser, above all claims to make good any loss or damage from whatever cause arising, including damage not occurring to the Plant itself, shall be excluded, whatever legal ground may be underlying such claims.

The said exclusion of liability shall not apply in the case of intent or gross negligence on the part of the owner or his executives, in the case of negligence on the part of the owner or his executives, in the case of negligence causing damage to life, body or health, nor in cases of negligent breach of a condition which goes to the root of the Contract ("wesentliche Verpflichtungen")

In case of negligent breach of a condition which goes to the root of the contract ("wesentliche Verpflichtungen") the Vendor shall be liable only – except in cases of intent or gross negligence on the part of the owner or his executives – for reasonably foreseeable damage which is intrinsic to the Contract.

Nor does the said exclusion apply in cases of strict liability, under the Product Liability Act (Produkthaftungsgesetz), for defects of the Product causing death or personal injury, or damage to items of property that are used privately. Furthermore, the said exclusion of liability shall not apply in the case of damage due to fraudulent concealment or despite specific guarantees.

Serious default is included in the concept of gross negligence used.

12. Rights at termination

12.1 Termination of the Contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the Contract up to the time of termination.



13. Arbitration and Law applicable

- 13.1 Any dispute arising out of the Contract shall be finally settle, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (Paris), by one or more arbitrators designated in conformity with those Rules.
- 13.2 Unless otherwise agreed, the Contract shall be governed by law of the Vendor's country.
- 13.3 The Arbitral Tribunal shall sit if the matter cannot be orderly settled in the written proceedings at the seat of the defendant party. The official languages in court are German and English.
- 13.4 If the parties expressly so agree, but not otherwise, the arbitrators shall, in giving their ruling, act as amiable compositors.
- 13.5 If required by the relevant legal system as precondition for the acknowledgment and enforceability of awards and decisions at the location of the respective party, the parties shall conclude a separate arbitration agreement satisfying the requirements of the relevant legal system and stipulating the ICC Rules of Arbitration pursuant to Art 13.1.

APPENDIX to General Terms and Conditions

This Annex shall be effective if no provisions to the contrary have been made between the parties in the contract.

Description	Clause	Quote/Amount
A. Percentage to be deducted for each week's delay	7.3	0,5 %
B. Maximum percentage which the deductions above (A)	7.3	5 %
C. Maximum amount recoverable for non-delivery	7.5	25 %
D. Maximum amount recoverable on termination by Vendor for failure to take delivery or make payment	7.7 8.7	25 %
E. Rate of interest on overdue payments	8.7	8 % above base interest rate
F. Period of delay in payment authorizing termination by Vendor.	8.7	1 month
G. Guarantee period for original Plant and Parts replaced or renewed	9.2 9.6	12 months 12 month
H. Maximum extension of guarantee period	9.5	12 month
J. Maximum rate of reduction	9.15.1	25 %
K. Maximum rate of damages in case of purchaser's withdrawal due to non-removable defects	9.15.2	25 %